

Outline of Contents LEGAL SERVICE PLANS

(All references to the Advisory Committee on Prepaid Legal Services should be disregarded as Chapter 58, section 31 of the Acts Of 1996, eliminated the Committee)

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1. Chapter 176H: Section 2: Establishment and operation of insured legal services plan; types of plans

Who May Establish and Operate

_____ Any sponsor may establish and operate an insured legal services plan underwritten in whole or in part by an insurer subject to the provisions of this chapter.

Types of Plans

_____ An insured legal services plan may be either an indemnity plan or a service plan, or a combination of both.

_____ Under an indemnity plan, benefits for covered legal services shall be paid to the insured for the legal services of an attorney of the insured's choice.

_____ Under a service plan, benefits for covered legal services shall be paid to a participating attorney for the legal services of a participating attorney of the insured's choice, provided, however, that such benefits shall be paid to an attorney for his legal services, whether or not such attorney is a participating attorney, if the insured chooses such attorney and notifies the insurer in writing before such legal services are rendered.

2. Chapter 176H: Section 4. Insurance certificates; issuance; required provisions

Requirements for Issuance of Certificates

_____ An insurance certificate shall be issued to each insured under an insured legal services plan. No insurance certificate shall be issued unless it contains the following provisions:

_____ (a) A statement of covered legal services and the basis for payment for such legal services;

_____ (b) A statement of the duration of the legal services provided and of the terms and conditions upon which such services may be extended, renewed, amended, canceled or otherwise terminated; and

_____ (c) A statement of the period of grace which will be allowed for making any payment due to the insurer which in any event shall not be less than 30 days.

3. Chapter 176H: Section 5: Group insurance policy or insurance certificate contract; filing copies; approval; hearing

Prior Approval Required

No insurer shall issue a group insurance policy providing benefits for legal services or an insurance certificate which is a contract, or any amendment to such group policy provisions or insurance certificate previously approved and issued without prior approval of the Commissioner.

Approval Process

_____ Prior to such approval the insurer shall file a copy of the group insurance policy or the insured legal services plan and insurance certificate contract to be issued thereunder with the Commissioner and shall provide copies thereof to the advisory committee on prepaid legal services.

The advisory committee on prepaid legal services shall review the group insurance policy or the insured legal services plan and insurance certificate contract and advise the Commissioner in writing whether such group policy provisions or plan and certificate are in conformity with rules of the supreme judicial court governing the practice of law.

After the filing of any such plan, certificate, or group insurance policy provisions the Commissioner shall either approve the plan in writing or hold a public hearing upon such plan, upon not less than 15 days written notice to all interested parties.

Otherwise, 30 days after such filing, the plan, certificate, or group insurance policy shall be deemed approved.

Advisory Committee as Party

_____ The advisory committee on prepaid legal services shall be a party with respect to any plan, certificate or group policy filed under this section, shall have the right to participate in any hearing held hereunder, and shall receive notice of the approval by the Commissioner of any plan, certificate or group policy under the provisions of this section.

Grounds for Approval / Disapproval

Any such plan, certificate or group policy shall be approved unless the Commissioner finds that the plan, certificate or group policy contains a provision which is unfair, inequitable, misleading, or deceptive, or that the plan, certificate or group policy does not comply with the provisions of this chapter or any other applicable provision of law, or rule of the supreme judicial court.

4. Chapter 176H: Section 7: Membership legal services plan

Who May Establish and Operate

_____ Any corporation formed under the provisions of MGL c. 180, any corporation formed under general or special law for any of the purposes set forth in MGL c. 180, s. 4, or any labor organization is authorized to establish and operate a membership legal services plan. Only such corporations or labor organizations may be sponsors of membership legal services plans.

Bona Fide Members

_____ Under a membership legal services plan sponsored by a corporation whose primary purpose is other than the establishment and operation of a membership legal services plan, legal services may be provided only to bona fide members of the corporation and the dependents of such members; and any such member may elect not to participate in such plan.

Contracts with Attorneys

_____ A sponsor of a membership legal services plan may contract on behalf of its members with a participating attorney or participating attorneys, including, at the option of the sponsor, an attorney or attorneys chosen by a member or members, to provide covered legal services to such members and dependents.

Who May NOT Provide Legal Services

_____ A membership legal services plan shall not include any plan or legal services provided by:

- _____ a. legal aid office or public defender office,
- _____ b. a military legal assistance office,
- _____ c. a lawyer referral service operated, sponsored or approved by a bar association representative of the general bar of the geographical area in which the association exists, or
- _____ d. any other nonprofit organization that recommends, furnishes or pays for legal services to its members or beneficiaries in a manner incidental and reasonably related to a primary purpose of such organization to promote a public interest, including, without limitation, defense of human and civil rights, elimination of prejudice and discrimination as to race, religion, sex and national origin, lessening neighborhood tensions, preservation of scenic beauty, combating or preventing pollution, preservation of natural resources, protection of consumer interest, promotion of cultural, historical or other educational activities, and prevention of cruelty to animals.

5. Chapter 176H: Section 8: Membership certificate; required provisions

_____ A membership certificate shall be issued by a sponsor to each participating member under a membership legal services plan.

Requirements for Membership Certificates

No membership certificate shall be issued unless it contains the following provisions:

- _____ (a) A statement of covered legal services under the certificate and the basis for payment for such legal services;
- _____ (b) A statement of the duration of the certificate and of the terms and conditions upon which it may be extended, renewed, amended, canceled or otherwise terminated;
- _____ (c) A statement of the period of grace which will be allowed for making any payment due from the participant member under the certificate, which in any event shall not be less than 30 days; and
- _____ (d) A description of the membership legal services plan's method for resolving member complaints.

6. Chapter 176H: Section 9: Issuance of membership certificates; filing of copy of plan and certificate for Commissioner's approval; hearing

No sponsor shall issue a membership certificate or any amendment to a membership certificate previously approved and issued without prior approval of the Commissioner.

Process to Obtain Approval of Plan and Certificate

_____ Prior to obtaining the Commissioner's approval, the sponsor shall file a copy of the membership legal services plan and membership certificate to be issued thereunder with the Commissioner and copies thereof to the advisory committee on prepaid legal services.

The advisory committee on prepaid legal services shall review the membership legal services plan and membership certificate and advise the Commissioner in writing whether such plan and certificate are in conformity with rules of the Supreme Judicial Court governing the practice of law.

Within 30 days after the filing of any such plan or certificate the Commissioner shall either approve the plan in writing or hold a public hearing on such plan, after not less than 15 days written notice to all interested parties.

Advisory Committee as Party

_____ The advisory committee on prepaid legal services shall be a party with respect to any plan or certificate filed under this section, shall have the right to participate in any hearing held hereunder, and shall receive notice of the approval by the Commissioner of any plan or certificate under this section.

Grounds for Approval / Disapproval

_____ Any such plan and certificate shall be approved unless the Commissioner finds that:

- a. the plan or certificate contains any provision which is unfair, inequitable, misleading or deceptive,
- b. the plan or certificate does not comply with the provisions of this chapter or any other applicable provision of law or rule of the supreme judicial court, or
- c. that the sponsor has failed to establish its ability to provide covered legal services to its members in accordance with the terms of the membership certificate.

The Commissioner may approve any such plan subject to such conditions as may be appropriate to assure the continuing ability of the sponsor to provide covered legal services to its members in accordance with the terms of the membership certificate.

7. Chapter 175A: Section 7: Improper filing; hearings; aggrieved persons; remedies

Hearing On Improper Filings / Issuance of Order Deeming Filing No Longer Effective

If at any time the Commissioner finds that a filing does not meet the requirements of this chapter, she shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization.

Application For Review By The Commissioner

Any person or organization aggrieved with respect to any filing which is in effect may make written application to the Commissioner for a hearing thereon; provided, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection.

Contents Of Application/Hearing/ Determination/Issuance Of Order

The application shall specify the grounds to be relied upon by the applicant.

If the Commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, she shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the Commissioner finds that the filing does not meet the requirements of this chapter, she shall issue an order specifying in what respects she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization.

Additional Hearings

The Commissioner may also call a hearing at any time prior to the proposed effective date of any filing or any later effective date called for by order made pursuant to this chapter. If after such hearing the Commissioner finds that any such filing will not meet the requirements of this chapter, said filing shall not take effect.

211 CMR 90.00: Legal Services Plans (REGULATIONS)

211 CMR 90.03: Applicability

Except as provided in this regulation, 211 CMR 90.00 applies to all legal services plans established, operated, or sold in Massachusetts.

No legal services plan benefits may be offered for sale unless the plan of operation, the benefit contracts, and the rates have been approved by the Commissioner.

Non-applicability

211 CMR 90.00 does not apply to:

- (1) An automobile club providing legal fee reimbursement services in conformity with MGL c. 174B.
- (2) A labor organization providing legal services to its members and their dependents.
- (3) A corporation formed under MGL c. 180 providing legal services that do not exceed a limited amount of consultation and advice either alone or in combination with referral services.
- (4) An employee organization or employer which sponsors or co-sponsors an employee benefit welfare plan subject to the provisions of the Employee Retirement Income Security Act of 1974. This exemption does not apply to an insurance company associated with a plan under which benefits of prepaid legal services are provided in whole or in part through the purchase of insurance.
- (5) A program of student-supported legal services established pursuant to MGL c. 175.

Filing for Exemption

_____ An organization relying on one or more of the above exemptions must file a statement with the Commissioner which demonstrates that it qualifies for the exemption or exemptions.

211 CMR 90.04: Plan of operation and benefit contracts approval

Number of Copies

_____ Each insurer and membership plan sponsor must file 2 copies of its plan of operation and benefit contracts with the Commissioner and 1 copy with each member of the Advisory Committee on Prepaid Legal Services.

Licensing Requirements

_____ An insurer may not file until it has been licensed under MGL c. 175 to write legal services insurance.

Incomplete Filings

In the event the Commissioner determines that a filing is incomplete or that additional information is needed to properly evaluate a filing, he or she will notify the applicant in writing within 14 calendar days of the filing's submission concerning the additional documents or information that is required.

Review and Decision of the Commissioner

Within 30 calendar days after the submission of a complete filing, the Commissioner will review it in accordance with 211 CMR 90.00 and either approve the plan of operation and the benefit contracts in writing or hold a hearing after not less than 15 calendar days written notice to all interested parties. In the event a hearing is held, the Commissioner will within 30 calendar days after the submission of briefs either approve the plan of operation and the benefit contracts in writing or notify the applicant of his or her disapproval and the ground or grounds for disapproval.

211 CMR 90.05: Plan of operation

Non-applicability of Chapter 175

Membership plan sponsors are not subject to the insurance company licensing process contained in MGL c. 175. Instead, the internal operations of these sponsors will be reviewed under 211 CMR 90.05.

Overview Required

Membership plan sponsors must present a complete overview of their organization in their plan of operation. The overview must contain:

- ____ a. a description of the organizational framework,
- ____ b. the qualifications of management and key personnel,
- ____ c. the proposed method of operation, and
- ____ d. the financial resources of the enterprise.

Sections of the Plan of Operation

There shall be 4 sections of the plan of operation devoted to these 4 internal matters. Each section shall contain the information described below plus any additional information that the membership plan sponsor considers relevant.

- _____ 1. The 1st section shall consist of a copy of the articles or organization and bylaws.
- _____ 2. The 2nd section shall provide information on the organization's management and personnel. It shall include biographical sketches of the officers and directors,

details of any agreements relating to the corporation to which any officer or director is a party, and the officers' salaries and details of their employment status (full-time or part-time), compensation, and employment history of key management personnel and consultants or contractors involved in administration, marketing, enrollment, benefit procedures, grievance procedures, and financial matters. In addition, the section shall list the names and addresses of the organization's legal, accounting, and actuarial representatives. Finally, the section shall describe any financial relationships among any of the persons mentioned in the section.

_____ 3. The 3rd section shall describe the proposed method of operation in all the functional areas, including marketing, enrollment, benefit procedures, and grievance procedures. The section shall also contain the outline of a training program and related materials prepared for new members of the organization's board of directors. The program shall be relevant to the duties of a director and shall include information on policy issues relating to legal services plans and the costs of legal service delivery.

_____ 4. The 4th section shall describe the financial resources of the membership plan sponsor and other pertinent financial and contractual information. The section shall include:

_____ (a) The following financial statements for 3 years, projected on a quarterly basis for year 1 and annually for years 2 and 3:

_____ 1. pro forma balance sheet;

_____ 2. statement of income and expense;

_____ 3. statement of changes in financial position;

_____ 4. cash flow;

_____ 5. capital expenditure; and

_____ 6. repayment schedule for existing or anticipated loans or alternative financing arrangements.

_____ The financial statements shall be accompanied by detailed statements and justifications of the underlying assumptions used.

_____ (b) A surplus statement, including the amount, which will be maintained, the initial source of funding for the surplus, and justification for the surplus amount selected.

_____ (c) A reserve statement, including the types which will be established, their amounts, and the manner in which they will be calculated.

_____ (d) Copies of letters of financial support or credit, bonds, or loan guarantees.

- _____ (e) Any contracts with participating attorneys under which the attorneys assume part or all of the risk of claims exceeding revenues.
- _____ (f) Copies of any reinsurance, conversion or other agreements under which the covered legal services will be provided in the event the membership plan sponsor is unable or ceases to provide them for any reason.
- _____ (g) A copy of the vote of the Board of Directors designating the permissible forms of investments of the corporation's funds.
- _____ (h) A detailed statement of the organization's plan for the distribution of retained earnings.
- _____ (i) Fidelity bonds for all officers and all employees entrusted with the handling of funds.
- _____ The 4 sections of the plan of operation submitted under 211 CMR90.05 may not contain any provisions that are unfair or inequitable in the judgment of the Commissioner.

Fifth Section

- _____ Membership plan sponsors must have a 5th section in their plan of operation which identifies the primary purpose of the corporation and describes the purposes for which the corporation was formed and its present and proposed activities.

OTHER REQUIREMENTS

Articles of Organization and By-laws

- _____ The articles of organization and by-laws shall provide that no more than 1/2 of the directors may be participating attorneys and that at least 1/3 of the directors will be subscribers who are not attorneys. (For purposes of the preceding sentence, "subscribers" shall also include signatories of group contracts and "attorneys" shall include members of an attorney's immediate family and employees of an attorney).

Financial Requisites

- _____ The plan of operation must demonstrate to the satisfaction of the Commissioner that the membership plan sponsor possesses the ability to assure that promised benefits will be provided. In order to establish this ability, a membership plan sponsor must show, among other things, that it can establish and maintain a surplus of at least \$300,000. The Commissioner may reduce the \$300,000 minimum requirement if she is satisfied that existing contracts with participating attorneys provide a sufficient source of capital through direct capital contribution and by withholding a portion of the attorneys' fees. The Commissioner may also

reduce the surplus amount if she is satisfied that reinsurance or other arrangements exist which adequately protect the rights of subscribers.

Bona Fide Members Requirements

If the Commissioner determines that the primary purpose of the corporation is other than the establishment and operation of a membership legal services plan, then the membership plan sponsor shall observe the following standards relating to bona fide members of the corporation:

- _____ 1. contracts may be issued only to individuals who have been members of the corporation for at least three months,
- _____ 2. enrollment in the legal services plan may not be made a condition of membership in the corporation, and
- _____ 3. separate fees reflecting allocable expenses must be charged for corporate membership and legal services plan membership.
- _____ In insured service legal services plans and membership legal services plans, subscribers will be seeking the services of a limited number of participating attorneys.

Attorney Participation / Use of Non-Plan Attorneys

- _____ The insurers and membership plan sponsors associated with these plans must demonstrate to the Commissioner that a sufficient number of participating attorneys will be available at all times.
- _____ This presentation in the plan of operation shall include the ratio of full-time equivalent participating attorneys to subscribers which will be maintained during the period of actual operations.
- _____ The ratio shall be accompanied by a detailed explanation of how it was developed, including the use of projections of utilization of covered legal services by subscribers and covered dependents and projections of the amount of attorney-time required to furnish the covered legal services.
- _____ A subscriber of an insured service legal services plan must be permitted to use any nonparticipating attorney so long as the subscriber mails the insurer a written notice before receiving any legal services. In addition, the nonparticipating attorney must be paid the same benefits as a participating attorney.
- _____ A subscriber of a membership legal services plan must be allowed to use a non-plan attorney at the membership plan sponsor's expense if the subscriber is unable to find a participating attorney willing and able to handle a non-frivolous matter that is a covered service.
- _____ The Sponsor may deny access to the non-plan attorney if the subscriber's problem does not require prompt attention and a qualified participating attorney will be

available within a reasonable time. The sponsor must, however, have an impartial procedure for settling disagreements about the grounds for demanding a non-plan attorney.

Each insurer and membership plan sponsor shall demonstrate to the satisfaction of the Commissioner that the requirements presented above have been met.

Additional Requirements for Plan of Operation

_____ The plan of operation of insurers shall include the relevant language of the benefit contracts and a description of the manner in which payments to non-participating attorneys will be computed.

_____ The plan of operation of membership plan sponsors shall include the relevant language of the benefit contracts, a description of the procedure that will be used for settling disagreement, and the identity of the party selecting the attorney (membership plan sponsor or subscriber).

Contract Form

_____ The plan of operation for insured service legal services plans and membership legal services plans must contain a copy of all participating attorney contract forms and any documents referred to in the contracts.

_____ The Commissioner will disapprove the plan of operation if she determines that use of the contract forms will tend to increase the cost of legal services through anti-competitive practices illegal under MGL c. 93, 83A, or 176D.

_____ The Commissioner will also disapprove the plan of operation if the contracts do not effectively encourage participating attorneys to utilize all feasible cost saving approaches.

_____ The Commissioner will disapprove the plan of operation if the contracts do not comply with the rules of the Supreme Judicial Court relating to the practice of law or the contracts do not require participating attorneys to carry malpractice liability insurance.

Subscriber Satisfaction Form

_____ The plan of operation for insured service legal services plans and membership legal services plans shall also contain a copy of a subscriber satisfaction form and a plan for its distribution.

_____ The form must be distributed to all subscribers after they have received a covered legal service.

_____ The form must elicit information on the quality of the services received, including the promptness, openness, courteousness, and ability of the participating attorney and his or her clerical and paralegal support personnel.

_____ The form shall clearly indicate that the subscriber need not furnish his or her name.

211 CMR 90.06: Benefit contracts

Contract Form, and Certificate Submission

_____ Each insurer and membership plan sponsor must submit a copy of its group and individual contract forms along with the plan of operation.

_____ Each group contract form must be accompanied by the certificate that summarizes the provisions of the contract for the group subscribers.

_____ Each certificate and individual contract form must be accompanied by its Flesch scale readability score, computed by the procedure specified in MGL c. 175, § 2B.

_____ No certificate or group or individual contract form may contain any provisions which are unfair, inequitable, misleading or deceptive.

Disapproval

_____ No certificate or contract form may permit the insurer or membership plan sponsor to reduce the level of benefits or assess subscribers during the coverage period.

Requisite for Certificate / Contract Form

_____ No certificate or individual contract form will be approved that does not meet the standards set out in MGL c. 175, § 2B or that does not state clearly and in understandable style and language:

_____ (1) The benefits available to the subscriber and his or her covered dependents.

_____ (2) The limitations and exclusions on the benefits, including an explanation of any deductible, coinsurance, or copayment features and any waiting periods.

_____ (3) The manner of obtaining benefits, including the type of attorneys that may be used, the procedures, including those of appeal, that must be followed before nonparticipating attorneys may be used and the claims procedure.

_____ (4) The organization's procedure for the use of the subscriber satisfaction form and its procedure for resolving complaints concerning the operations of the legal services plan and the quality of participating attorneys, including a telephone number for registering grievances.

_____ (5) The role of the Board of Bar Overseers is regulating attorney conduct and investigating submitted complaints to the Board. *(Complaint procedures and information regarding the process can be obtained from the Office of the Bar Counsel, 75 Federal Street, Boston, MA 02110. Telephone: 617-728-8750; their*

website is www.state.ma.us/obcbbo where you can click onto “How to File a Complaint”)

- _____ (6) The statutory procedure for obtaining a Division of Insurance hearing on any dispute or controversy arising between the insurer or sponsor and any subscriber or between any attorney and subscriber. *(Complaint procedures and information regarding the process can be obtained from the Division of Insurance Consumer section. The DOI website is www.state.ma.us/doi where you can click on Consumers’ Services section and onto “Filing a Complaint”. Hearings are held pursuant to MGL c. 176D.)*
- _____ (7) The conditions upon which the certificate may be extended, renewed, amended, canceled or otherwise terminated.
- _____ (8) The premium which must be paid by or on behalf of the subscriber and the coverage period.
- _____ (9) The number of days of grace (minimum of 30) which will be allowed for making any payment due under the certificate or individual contract.
- _____ (10) A general information telephone number.

211 CMR 90.07: Modification of plan of operation and benefit contracts

- _____ No insurer or membership plan sponsor shall change any provision of its plan of operation or benefit contracts without the Commissioner's prior approval.
- _____ Proposed changes shall be filed and reviewed in the same manner as the original document.
- _____ Each filing shall include an explanation supporting the need for the change.

Additional Provisions:

Unfair and Deceptive Trade Practices:

_____ Any filing not in compliance with the above referenced requirements may be deemed to be in violation of the provisions of Chapter 176D of the Massachusetts General Laws. We hereby certify that the provisions set forth in this filing do not entail any intentional unfair and deceptive trade practices. Furthermore, we understand that we are subject to the penalties associated with practices that are in clear violation of this statute.